LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 6731
BILL NUMBER: SB 190

DATE PREPARED: Apr 12, 2001
BILL AMENDED: Apr 11, 2001

SUBJECT: Numerous Changes to Probate, Trust, and Tax Laws.

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FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides for various probate, trust, and tax amendments. The bill contains the following provisions:

Inheritance tax affidavit - The bill provides that an affidavit stating that no Inheritance Tax is due after applying the Inheritance Tax exemptions may be submitted to the County Assessor with a request for a consent to transfer. The bill specifies that a request to transfer personal property is unnecessary when property may be transferred by law without consent of the Department of State Revenue. The bill provides that the Department of State Revenue or the County Assessor may rely upon the affidavit in determining that the transfer will not jeopardize collection of Inheritance Tax. The bill also provides that the affidavit may be recorded in the Office of the County Recorder if the affidavit concerns only real property and contains the legal description of the real property in a decedent's estate. The bill creates a presumption that no Inheritance Tax is due if the affidavit is properly executed and recorded. The bill specifies when a presumption of no tax due on personal property exists. The bill also provides that an Inheritance Tax lien may not attach to real property if the affidavit was properly executed and recorded in the county in which the real property is located, unless the Department of State Revenue obtains an order that an Inheritance Tax is owed. It further specifies when a lien on personal property terminates. The bill repeals a redundant statute concerning the form of an affidavit used to state that no Inheritance Tax is due.

Power of attorney accounting - The bill authorizes a court to order an attorney in fact to render a written accounting. The bill also provides that a person who refuses to accept the authority of an attorney in fact is liable for: (1) Three times the actual damages; (2) prejudgment interest on the damages; and (3) the attorney's fees of the person bringing the action. The bill provides for additional conditions under which a person is not liable for refusing to accept the authority of an attorney in fact.

Applicability of the dead man's statute - The bill provides that the "dead man's statute" does not apply: (1) in a proceeding to contest the validity of a will or a proceeding to contest the validity of a trust; and (2) to a custodian or other qualified witness to the extent the witness seeks to introduce evidence admissible under the hearsay exception for records of a regularly conducted business activity.

Inheritance, estate, and transfer tax due dates - The bill changes the due date for the Inheritance Tax, Estate Tax, and Generation-skipping Tax from 18 months to 12 months after the date of death. The bill changes the due date for filing an Inheritance Tax return from 12 months to nine months after the date of death. The bill also changes the payment deadline from 12 months to nine months from the date of death for receiving the 5% Inheritance Tax discount for early payment.

Construction of nonprobate transfers - The bill adds to the trust code rules of construction concerning nonprobate transfers.

Surviving spouse allowance - The bill increases the allowance (from $15,000 to $25,000) that a surviving spouse is entitled to receive from a decedent's estate. The bill provides that the allowance may be claimed against the personal property of the decedent or a residence that is a part of the decedent's estate, or a combination of both. The bill also provides that if the personal property of the decedent and a residence that is a part of the decedent's estate are worth less than $25,000, the difference may be claimed against real estate in the decedent's estate.

Various probate and trust matters - The bill specifies that: (1) When there is no conflict of interest between the guardian of the estate of a protected person and the protected person, an order binding the guardian of the estate binds the protected person; and (2) orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed. The bill removes language that causes an ambiguity. The bill also increases from $5,000 to $10,000 the maximum amount of debt owed to a minor and the maximum value of property belonging to a minor that may be paid or delivered to a person having the care and custody of the minor without giving a bond or an order of the court. The bill provides that if the property of an incapacitated person does not exceed $10,000, the court may, without the appointment of a guardian or posting of a bond, order the property be deposited or delivered to a suitable person to hold or dispose of as the court directs.

Probate notices and hearings - With respect to the filing of an account for final settlement of a decedent's estate, the bill eliminates the requirement that a newspaper notice be published when actual notice to the last known address is given. The bill also eliminates the actual notice and the hearing requirements in a supervised estate when all persons entitled to share in the final distribution of the estate waive notice and consent to the final account and distribution. The bill allows a personal representative to provide notice by publication if a person entitled to share in the residue of the estate cannot be located.

Investments by fiduciaries - The bill provides that a trustee may expend trust income and principal to pay annual premiums for life insurance contracts subject to limitations imposed by the Probate Court or authorized by the trust instrument. (Current law limits a trustee's investments in life insurance contracts to 25% of the trust income in the preceding calendar year unless a greater amount is authorized by the Probate Court or the trust instrument.)

Various probate deadlines - The bill reduces the time for giving notice to creditors from three months to one month and reduces the period for barred claims from one year to nine months. The bill changes various probate deadlines and periods from five months to three months, including deadlines concerning claims and filings to enforce liens regarding real estate.

Distribution of Net Estate - Provides that if a person who has a child by a previous spouse dies: (1) intestate; or (2) testate and a subsequent spouse of the decedent elects to take against the will; the subsequent childless spouse of the decedent takes the appraised value of 33% of the lands of the deceased. It allows a person with a valid power of attorney for a surviving spouse to exercise the spouse's right of election.

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: July 1, 2001.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) *Surviving Spouse Allowance:* The bill increases the surviving spouse allowance from $15,000 to $25,000 would decrease the taxable estates, for purposes of the Inheritance Tax, for some estates. Any impact would depend on the class of beneficiaries and the size of the estate. Transfers to a surviving spouse are exempt from the Inheritance Tax. The only types of estates which this provision would impact are those with additional beneficiaries and the surviving spouse is not the residual beneficiary. The amount of the impact would be minimal.

Distribution of Net Estate: The bill provides that if a person who has a child by a previous spouse dies: (1) intestate; or (2) testate and a subsequent childless spouse of the decedent elects to take against the will; the subsequent childless spouse of the decedent takes the appraised value of 33% of the lands of the deceased (instead of a life estate in one-third of the lands of the deceased). Potentially, this provision could have a minimal impact because it would increase the value of the lands going to the decedent's spouse which would be exempt from Inheritance Tax. The impact would depend upon the number of such spouses who elect to take against the decedent's will.

The other provisions of the bill have no fiscal impact.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) The provisions (1) increasing the surviving spouse allowance and (2) relating to the distribution of the net estate to a subsequent spouse would have a minimal impact to the counties because 8% of the Inheritance Tax collected on transfers made by Indiana residents goes to the county where the tax is collected. Similar to the state, the impact is expected to be minimal. It is important to note that a reduction in the amount of Inheritance Tax retained by counties due to the bill may be reimbursed by the state under the replacement provision established by P.L. 254-1977. The replacement provision was established when the Class A exemption was increased on July 1, 1997. The replacement provision guarantees that in each fiscal year each county receives an amount under the Inheritance Tax that is equal to the five-year annual average amount of Inheritance Tax revenue retained by that county from FY 1991 to FY 1997, excluding the highest and lowest year. Therefore, a reduction in tax retained by a county due to the bill would be reimbursed only to the extent that the changes made by the bill cause the amount of tax revenue retained by the county to fall below its guaranteed amount. Currently, most counties are retaining more Inheritance Tax revenue than is guaranteed under the replacement procedure.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Counties, courts with probate jurisdiction.

Information Sources: Department of State Revenue, Bill Reynolds, 232-2156.